

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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ANDREA J. HARTER,

Plaintiff,

-against-

NAVIENT SOLUTIONS, INC. and PIONEER
CREDIT RECOVERY, INC.

Defendants.
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No. 17-cv-406

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, Defendants Navient Solutions, LLC s/h/a Navient Solutions, Inc. (“Navient”) and Pioneer Credit Recovery, Inc. (“Pioneer”) (collectively, “Defendants”), by and through their attorneys, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., file this Notice of Removal with respect to the case identified as *Andrea Harter v. Navient Solutions, Inc. and Pioneer Credit Recovery, Inc.*, Index No. 49172/2017, from the Supreme Court of the State of New York, County of Wyoming. In support of this Notice, and pursuant to Local Rules of Civil Procedure for the Western District of New York, Rule 81(a)(3), Defendants annex hereto as Exhibit A, an index identifying each document served on Defendants in the state court action. In support of this Notice, Defendants state as follows:

TIMELINESS OF REMOVAL

1. On or about April 20, 2017, Plaintiff Andrea Harter (“Harter” or “Plaintiff”) filed a Verified Complaint (the “Complaint”) with the Clerk of the Supreme Court of the State of New York, County of Wyoming, alleging interference with and retaliation for using FMLA under the Family Medical Leave Act of 1993, (29 U.S.C. § 2601, *et seq.*) (the “FMLA”); retaliation in violation of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 215(a)(3)) (the

“FLSA”), for pumping breastmilk at work, and various state law claims. A true and correct copy of the Complaint is annexed hereto as Exhibit D.

2. Defendants were first served with the Summons and Complaint on or about April 26, 2017. A true and correct copy of the Summons served on Defendant Navient is annexed hereto as Exhibit B. A true and correct copy of the Summons served on Defendant Pioneer is annexed hereto as Exhibit C.

3. Defendants’ time to answer, move, or otherwise respond to the Complaint is May 16, 2017.

4. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because such notice is filed within thirty (30) days after first notice by Defendants of Plaintiff’s state court action.

BASIS FOR REMOVAL: FEDERAL QUESTION

5. 28 U.S.C. § 1331 gives federal district courts “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States.” 28 U.S.C. § 1331. This Court has original jurisdiction, as defined by 28 U.S.C. § 1331, over this civil action pursuant to the FMLA, 29 U.S.C. § 2617(a)(2) (“An action to recover the damages or equitable relief . . . may be maintained against any employer . . . in any Federal or State court of competent jurisdiction by any one or more employees”) and FLSA, 29 U.S.C. § 216(b) (“An action to recover the liability . . . may be maintained against any employer . . . in any Federal or State court of competent jurisdiction by any one or more employees”).

6. This Court also has jurisdiction over all of the remaining, related state law claims asserted in Plaintiff’s Complaint pursuant to 28 U.S.C. §§ 1367(a) and 1441(c) and general principles of supplemental jurisdiction.

7. Accordingly, this case is a civil action founded on a claim or right arising under the laws of the United States over which this Court has original jurisdiction, and is therefore one which may be removed from the Supreme Court of the State of New York, County of Wyoming, pursuant to 28 U.S.C. § 1441(c).

8. Defendants will serve copies of this Notice of Removal upon Plaintiff and file a copy with the Clerk of the Supreme Court of the State of New York, County of Wyoming, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendants respectfully request that this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action from the Supreme Court of New York, County of Wyoming, to the United States District Court for the Western District of New York.

Dated: New York, New York
May 11, 2017

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By s/ Frank Birchfield
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Frank Birchfield, hereby certify that on May 11, 2017, I caused the within Notice of Removal to be submitted electronically to the Clerk of the Court for the United States District Court for the Western District of New York, and a copy of the within pleading and attachment to be served via Federal Express upon:

Lindy Korn, Esq.
The Law Office of Lindy Korn
535 Washington Street, Ninth Floor
Buffalo, New York 14203

Attorneys for Plaintiff

s/ Frank Birchfield
Frank Birchfield

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